

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 6, 2013 at 9:31 A.M.

1. 12-32702 -B-7	E. BURKHOLDER	MOTION FOR RELIEF FROM
PD-1		AUTOMATIC STAY
		6-26-13 [26]
PNC BANK, N.A. VS.		

Tentative Ruling: Jeff Burkholder's opposition is overruled. The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 5705 Teck St, Fair Oaks, California 95628 (APN 249 0081 001) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that debtor has failed to make twenty (20) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a statement of non-opposition to the motion and a report of no distribution.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Jeff Burkholder's opposition is not persuasive. Here, Jeff Burkholder merely requests additional time to "secure financing and negotiate with the creditor." However, his request arguments fail to show that the movant is not legally entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2). The court will not withhold relief from the automatic stay to which a creditor is entitled in order to create negotiating leverage for another party.

The court has considered the merits of Jeff Burkholder's opposition even though he is not the debtor. He states that the debtor died on January 2, 2013 and that he is "in charge of handling her estate," but he does not say anything about any probate proceeding or court appointment to administer the estate. The Federal Rules of Bankruptcy Procedure ("F.R.Bankr.P.") provide that the death of a debtor shall not abate a chapter 7 case, and that the bankruptcy estate shall be administered and the case concluded in the same manner, so far as possible, as though the death had not occurred. F.R.Bankr.P. 1016. However, that does not mean that anyone who chooses to do so can represent the position of the debtor in the bankruptcy case. A court appointed executor of an estate or a court appointed guardian ad litem can do that, and under the recently

adopted F.R.Bankr.P. 1004.1, a "next friend" appointed by the bankruptcy court can do that, but Mr. Burkholder does not appear to hold any of those qualifications. In the future, the court will not recognize Mr. Burkholder as spokesman for the debtor unless he shows an appropriate qualification.

The court will issue a minute order.

2. [13-27402](#)-B-7 THOMAS/ROBBIN BITZ MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
7-19-13 [[11](#)]
GREENTREE SERVICING LLC VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

3. [13-28436](#)-B-7 CYNTHIA ADAMS MOTION FOR RELIEF FROM
SMR-1 AUTOMATIC STAY
7-2-13 [[12](#)]
TEG EQUITIES & HOLDINGS, LLC
VS.

Disposition Without Oral Argument: The motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to obtain possession of the real property located at 1019 Dornajo Way #129, Sacramento, CA 95825 (the "Property") in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Cause for modification of the automatic stay exists because movant acquired title to the Property at a pre-petition sale and neither the estate nor the debtor has any interest in the Property, other than a bare possessory interest.

The court will issue a minute order.

4. [12-41541](#)-B-7 MICHAEL/YVONNE RAINS MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
7-1-13 [[106](#)]
JPMORGAN CHASE BANK, N.A.
VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2008 GMC Sierra 2500HD (VIN 1GTHK23698F195579) (the "Collateral"), at 12:01 a.m. on June 21, 2013, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

There is no evidence that debtors performed their stated intention (reaffirm) with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2)(B).

The court will issue a minute order.

5. [13-23668](#)-B-7 BERNARD/PHYLLIS HAHN MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY AND/OR MOTION
 FOR ADEQUATE PROTECTION
 6-28-13 [[22](#)]
- FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtors received a discharge on June 24, 2013, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 357 North Lincoln Way, Galt, CA 95632 (APN 150-0131-022) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees or costs. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make eleven (11) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intent to surrender the Property. The trustee has filed a report of no distribution.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

6. [13-26571](#)-B-7 TIMOTHY BOEKELMAN MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
 6-27-13 [[12](#)]
- THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A. VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 1735 211th Way Northeast, Sammamish, WA 98074 ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 14-day

period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that debtor has failed to make forty-nine (49) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

As to the debtor's allegations regarding potential wrongdoing by the movant, counterclaims and offsets are not properly adjudicated on a motion for relief from automatic stay; however, the court may consider the existence of the allegations in exercising its discretion to grant or deny relief on the motion. Biggs v. Stovin (In re Luz Int'l.), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998); In re Bialac, 694 F.2d 625, 627 (9th Cir. 1982). Here, the debtor in essence ask the court to assume the truth of his allegations and to deny relief on that basis. The court declines to do so. The loan was made in 2004, and the movant alleges without dispute that the debtor has failed to make forty-nine (49) mortgage payments. Based on the foregoing, the court finds that the movant has established cause for relief from the automatic stay.

As to the debtor's desire to obtain a modification of the loan, the court cannot compel the movant to modify the terms of the note or deed of trust under currently existing law; however, nothing in this ruling prevents the movant from entering into a loan modification. The ruling only grants relief to foreclose "in accordance with applicable non-bankruptcy law." If any state law obligates the movant to communicate with the debtor, to assess the debtor's situation or to enter into a loan modification with the debtor (the court makes no finding or conclusion regarding any of the foregoing), such obligation(s) is/are not affected by the court's ruling.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

7. [13-24180](#)-B-7 LEONARD CLOK
ASW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-1-13 [[14](#)]

BANK OF AMERICA, N.A. VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on July 16, 2013, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 5903 Mack Road, Sacramento, CA 95823 (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P.

4001(a)(3) is ordered waived. The court awards no fees or costs. Except as so ordered, the motion is denied.

Movant alleges without dispute that debtor has failed to make three (3) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to surrender the Property. The trustee has filed a statement of non-opposition to the motion and a report of no distribution.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

8. [13-25484](#)-B-7 RUTH ARQUILLANO
RCO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-2-13 [[14](#)]

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A. VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on August 1, 2013, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 5501 Celestial Way, Citrus Heights, CA 95610 (APN 233-0091-005) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. The court awards no fees or costs. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make twenty-five (25) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a statement of non-opposition to the motion and a report of no distribution.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.